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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

MMI



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **OCT 21 2004**

IN RE:

Applicant:



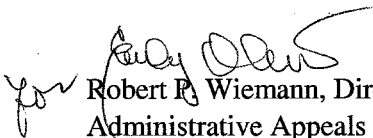
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant requests that his case be reopened.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present, as defined in 8 C.F.R. §244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided, as defined in 8 C.F.R. §244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his initial application on July 1, 2002.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. See 8 C.F.R. § 244.2(g).

On March 17, 2003, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his nationality and identity, his residence in the United States since December 30, 1998, and his physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided evidence of his nationality and identity and submitted evidence in an attempt to establish his residence and physical presence in the United States. The applicant did not present any evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant requests that his case be reopened. According to the applicant, he applied late because

he was afraid of being deported and because of a lack of information. The applicant also provides additional evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999 to the date of filing the application.

As stated above, the applicant was requested on March 17, 2003, to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of a Florida Identification card issued on January 7, 2003.
2. A copy of a Honduran identity card issued on October 21, 1997.
3. A copy of the applicant's birth certificate, with English translation.
4. Copies of store receipts.
5. Copies of paystubs dated August through December of 2001 and April through August 2002.
6. Copies of money transfer receipts dated August 31, 2001, September 4, 2001, September 14, 2001 and October 12, 2001.
7. Copies of hand-written rent receipts dated January 1, 1999, February 1, 1999, March 3, 1999, May 2, 1999, March 23, 2000, April 23, 2000, May 23, 2000 and June 23, 2000.
8. A statement from [REDACTED]

The Honduran identity card establishes the applicant's nationality and identification. According to Mr. [REDACTED] he has known the applicant since he arrived in the United States on November 25, 1998. Mr. [REDACTED] also claims that he let the applicant stay at his house [REDACTED] Miami, Florida) until he found a job and an apartment. However, Mr. [REDACTED] statement is not supported by any corroborative evidence. Affidavits are not, by themselves, persuasive evidence of residence or presence. The rent receipts are also not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Of the remaining evidence, the money transfer receipts indicates a date of August 31, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States. The evidence is therefore of no probative value.

It should also be noted that Mr. [REDACTED] stated that the applicant resided at his home since November 25, 1998. However, Mr. [REDACTED] fails to provide the specific dates that the applicant resided with him. Therefore, the claimed residence of the applicant at this address, [REDACTED] Miami, Florida, may conflict with the claimed residence of the applicant at the address listed on the rent receipts [REDACTED]

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application on July 2, 2003. On appeal, the applicant furnished:

1. Copies of paystubs dated August 27, 2001, October 27, 2001, November 9, 2001, November 17, 2001, August 9, 2002, September 6, 2002, September 20, 2002 and November 22, 2002.
2. A copy of a money transfer receipt dated November 22, 2001.
3. A copy of a 2002 W-2, Wage and Tax Statement.

The applicant also resubmitted documentation previously provided. As with evidence presented previously, the paystubs indicate a date of August 27, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States. This evidence too is of no probative value in determining the applicant's eligibility for TPS.

The applicant has failed to establish his qualifying residence or physical presence in the United States during the period from December 30, 1998 and January 30, 1998, respectively. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.